

## Jackson Board of Adjustment

May 2, 2012

### UNOFFICIAL UNTIL APPROVED

**Members in Attendance:** Frank Benesh, Joan Aubrey, Brian Walker and Dave Mason. Alternates attending the meeting were: Martha Benesh. Martha D. Tobin is the Recording Secretary.

The Chairman called the meeting to order at 7:05 p.m.

**2012-1 Hooley (Variance, 4 Evergreen Trail)** Dudley Davis joined the Board representing James and Veronica Hooley; Martha Benesh will be a voting member tonight. Gino Funicella is absent.

The Chairman opened the Public Hearing at 7:06 p.m.

The Chairman reviewed the procedure for this Hearing and reported that all the abutters were notified as was the Jackson School District which is across the street and not included; notice was published in the *Conway Daily Sun*. Receipts have been returned by Badger, Crowe and the Jackson School District and there may be more as the Chairman has not checked his Office mail and is unable to get it tonight. Joan Aubrey informed the Board she used to rent this location; she feels she can be objective.

The applicant had been asked to provide a plan that better showed the setbacks. Dudley noted the Hooleys were, at the time of application, thinking of purchasing the building. In 2010 the Crowes divided the property into a condo association so they could sell it. During inspection for sale there were two roofs on the shed and the rolled asphalt roof was rejected; Dudley was called in to work on this. There is one deck on each of these roofs that sits close over the roof so he had about a foot, at most, to work with; the decks had to come off to repair the roof. Dudley pulled a permit to do both decks and ripped those off. He received approval for one side which he replaced and brought up to code. The deck in this application was denied due to setbacks as it is fifty feet from the side of the road; technically the whole building is within the setback. The deck is not nearly the size of the roof. The Crowes had intended to build a deck across the whole roof but thought it would be easier to clear a smaller deck. A Board member thought the Crowes had the deck built between 2004 and the present however Dudley noted the deck was built in 1999. Dudley's suggestion was that it would be better to bring the deck out to make it seven feet longer to bring it to the load-bearing posts on the exterior of the shed, to make the deck wider and to place posts on parts that he knew was structurally sound. He has to assume there is proper framing and loads, if they were not the windows would have blown out; he hasn't taken the area apart. Dave asked if the reason for these proposed changes is just structural; Dudley noted that additionally over the years he has done work for the Crowes and he knows it was harder to shovel the roof and deck with the smaller deck; it meant having to first shovel the deck then the roof. He does not

necessarily know the posts would fall on a rafter however they were placed and nailed through the roof supported by a 2 x 6 that spans the joist. This was Dudley's recommendation to do this properly; to make this so the load is properly carried; he's meeting one-hundred-ten pounds per square foot for the snow load which is not the same as dead load. He did note that there were issues with the snow load on the other side; he fixed them so he assumes it will be the same on this side. That is a safety issue.

The Chairman noted Dudley could frame it and not enlarge the deck; Dudley agreed he could do it that way; he could reinforce the rafters but the most prudent way to do this was to go to the exterior wall. Dave believes adding the extra foot to carry the load is appropriate; however the reason for enlarging the deck to encompass the entire roof is because it would be easier to shovel. Dave asked about the porch but was asked to hold that until the second part of the application is discussed.

Martha Benesh wondered when the setbacks go into effect; it's fifty feet off the road. Therefore the deck was built and the setbacks were not enforced; the Board is being asked to increase the nonconformity. The Crowes did get a permit in 1999 however the building they submitted on the application is not what was built. The portion the Board is talking about isn't even on the plan. There was no porch on top in 1999 and the permit is for renovation and doesn't say anything about decks. Joan Aubrey pointed out this was an existing building and the Crowes converted it. Dave quipped they also decided to put a deck on it. The original information says the home has five bathrooms but it now says there are three and a half; Joan noted that's correct; one space became a pantry and the other is the laundry room; they also added a kitchen and changed it to a homestead.

Regarding the request to build a deck off the ground floor outside the door; Dudley noted this would mirror the one on the other side that was there when the Crowes pulled the permit in '99. Martha asked if this is one residence or two and was informed it's a single-family home now. Martha noted it could have an accessory apartment; she wanted clarification. The reason for the porch is for a safer means of egress. Currently there are two steps down so the safer egress means stepping out onto a porch rather than taking two steps. The deck will be about twelve inches high so there would still be steps down to the ground off the deck for egress; this would not be a living space; it would mirror the other side. Martha noted the Board is talking about covering dirt with wood; if they decided they wanted to put a stone patio in the Board wouldn't be having this discussion. The deck would go right up to the common land but no setback is needed on common land; the problem here is the fifty foot setback from the road; the whole building is in the setback.

Brian Walker asked if the Board can consider these items separately or must they be considered together; the Chairman noted the Board can grant one and not the other, it can grant these with conditions, it can approve none; whatever works best to further the Board's cause. The Board could grant a variance to bring the deck to one foot but not to widen it over the whole roof; it could deny the porch and say put in steps. A deck would be considered a structure but a patio wouldn't. Dudley noted the reason to ask for a deck is to bring this portion up so the owners would no longer be stepping down onto the

ground. He felt a deck to be flashed and anchored would be what the building called for. The Chairman reiterated that stairs would facilitate egress just as much. Dudley agreed but asked that the age of the owners be taken into account; they are in their seventies and this would provide a safer form of egress. Martha noted the Hooleys bought this property last year in their seventies; they didn't get elderly in the house

The Chairman noted part of the Public Hearing is asking any abutters for comments, however the room is empty.

The Chairman closed the Public Hearing at 7:32 p.m.

Joan summarized the issues noting she went back to 2.2.3. This is a nonconforming structure. This does not increase interior floor-space; this is not changing the roof; they are trying to improve the removal of snow. Dave noted if the deck is not supported properly, as is suspected, then there is a collapse hazard. It's clear that from a safety point they shouldn't have built it in the first place. The Chairman reminded folks that there could be floating rafters that took the load out to the bearing wall; he is not sure of the clause in the Zoning Ordinance (JZO) that addresses this situation; it was put there in response to Garland moving from a flat to a pitched roof. Dave found the section and read it. Joan feels this request is in the same spirit however Martha disagrees as she feels the clause is specific to altering pitch. Dave noted this is a situation where there is a building that has the same size, from a volume standpoint; the plan calls for extending a platform over the roof that already exists so it doesn't increase the volume. The Chairman noted if that were true then one could build a deck anywhere. Dave feels it's allowed under these circumstances because there is already a deck and thus, the volume is already there; this is not the same as building a deck where one doesn't currently exist; all they are doing is covering the roof. Martha wondered if the Board really cares about snow on the roof; this plan doesn't match the Ordinance; they can shovel the snow off their roof; she doesn't have decks on her roof. Dave noted if he were to put planks on his roof that doesn't increase volume versus if he were to add a fifteen foot deck off the back of the house where there is none. Martha feels the Board needs to get into the five questions; the Hooleys could put a sloped roof on the house and get rid of the snow instead of increasing the size of the deck. Dave feels, regardless of the issue with the size of the deck, moving the posts out to a load-bearing wall is a no-brainer. Dave still believes the volume is already there; the Hooleys are not adding more volume by essentially putting a railing around it. Joan agrees it's time to review the facts and apply the five questions.

Joan noted the building exists in the setback with an existing deck that is not structurally sound, extending out a foot to a load-bearing wall is for safety. The deck was put on in 1999 but was not inspected; it is built on piers not a foundation. Martha wants to know if the Board has a guarantee this plan would be putting a new deck on a solid foundation but was informed that's not the ZBA's issue. The Chairman appreciates bringing the deck out to a bearing wall is a special condition that makes this unique; one could argue that should be allowed. He has more difficulty with the other two parts; extending the deck to the rest of the roof and adding the porch where there are currently steps.

According to the definition of what a structure is, this has to be considered a structure. If we extend it here then there is more structure in the setback. The Chairman stated the hardship here would be to not allow the Hooleys to bring the deck out over the rest of the roof; he doesn't see anything unique about this building, unless the Board argues decks on roofs don't count at all; the other four criteria will be easy to address. Joan noted literal enforcement would not create an unnecessary hardship; there are viable alternatives; it may, however, be more work to shovel. Dave agrees the application doesn't meet the criteria of creating an unnecessary hardship.

The consensus of the Board is the extending of the deck by approximately one foot to place it on a load-bearing wall is appropriate and addresses safety. The Board needs to separate the application into three portions. A is the extension by approximately one foot in the Easterly/Southeasterly direction to a load-bearing wall; B is the expansion of the deck in the Northeasterly direction over the entire roof and C is the new porch on the Southeasterly corner of the house.

1. Granting of the variance would not be contrary to public interest Dave believes this applies to none of these; Martha agreed, noting no one would be hurt by this; there is a lot of space there too; the deck is something that is already there. The Board agrees A, B & C would not be contrary to the public interest.
2. The spirit of the Ordinance is preserved The Chairman noted this follows the same logic as the first discussion; he is not comfortable with B or C. Granting any variance would violate the ordinance; what is being asked for here is relatively modest; it is not going to egregiously violate the Ordinance. Regarding A and B, if the Board is talking about altering the neighborhood, extending the deck is not going to alter the neighborhood at all. Joan noted C seems to be the issue; it's a deck that fills in the space that's already there where the stairs come down. If the Hooleys can't put a deck on there because that's a structure how would they be able to put in stairs. The Chairman noted the steps are a structure that is already there; however, arguably, people need a way to get out of their house. He thinks, since it is away from the street, he's okay with saying "yes" the spirit of the Ordinance is preserved. The Board members agree the criterion is met for A, B & C.
3. Substantial justice is done, the loss to the individual is not outweighed by the gain to the general public The Chairman feels all three of these items meet the criteria; Joan noted the Hooleys are asking for modest structures. The Board members agree the criterion is met for A, B & C.
4. The value of neighboring properties is not diminished The Chairman noted there is no evidence that the value of neighboring properties would be diminished. The Board members agree the criterion is met for A, B & C.
5. Literal enforcement of the Ordinance would cause hardship The Board agrees this is the item that is going to be the tough one.

- A. Regarding the extension of the deck out approximately one foot to the load-bearing wall, the Chairman noted literally enforcing the Ordinance would be a hardship because of the unique characteristics of the deck and what is already there. The Board would be silly not to allow this to be done on a structural basis; it's a possible collapse hazard. The unique or special condition is the way the prior deck was built and that it would be awkward to find any other way to support it. The Board members agree the criterion is met for A.
- B. Regarding extending the width of the deck approximately from eleven to sixteen feet by five feet to cover the roof, the Chairman feels the grounds of facilitating snow removal don't count here. Martha noted the snow goes on the roof, it goes on the deck; she's not of the same mind; she doesn't see adding this as being non-conforming. Dave feels it would be hard to say it would be an unnecessary hardship; the Board members agree the reason presented is not a reason for the variance. Dave asked if there is another reason to extend the deck over the full length of the roof; they already have two upstairs exits. Dudley noted the gambrel determined the pitch so he couldn't change that. The Chairman suggested Dudley could take the deck off entirely; change the windows and do away with door. Dave noted the roof is there; if there was a deck on there they have to shovel it; no deck, they have to shovel; there is no unnecessary hardship; this is a convenience. Martha wants to know if anyone knows what the roof can or can't carry; she's concerned with the Board approving the extension of something that shouldn't be there. The Chairman noted Building Inspector Chalmers is fine with this and Dudley has also looked at it. The Board members agree the criterion is NOT met for B.
- C. Regarding the addition of a twelve-inch high porch/deck, Dave would like to talk about other options; the Hooleys could put a set of stairs in to replace the ones they have and that would meet the code. Joan has mixed feelings on this as the area is away from the street and they aren't changing anything. The Chairman asked what unnecessary hardship would result from a denial on this; a "reasonable exit" can be a set of stairs; it would be nice to have a deck there. This Board just had a request to put a deck on alongside the Wildcat Tavern that was turned down and that was only going to be seven or eight inches off the ground. Martha reiterated that the Hooleys knew in buying this house it came with the steps; the Chairman is not sure that matters. Martha feels it does matter; these folks just purchased this home; they knew they had two steps; it would be nice to have it flat but it's not necessary. The plan was to still have a step onto the ground off the deck anyway. The porch/deck has to be the same height as the house so there is a structure to fasten the new structure to; Dudley planned to use a 2" by 8" seven-inch step. The Chairman asked if anyone on the Board thinks C meets the criterion; no one does. Dudley still feels this is a safer form of egress; Martha noted the house already has four exits with two upstairs. Dudley's plan was to allow the owners to

come out of the structure and have some place to be in an emergency and then to exit from that point to the ground. Dave noted Dudley could build a step there that's a bit wider than the door and two to two-and-a-half feet across and have a place to stand. The Board is bound by the rules. The Board members agree the criterion is NOT met for C.

The Chairman noted, in summary, the Board is granting a variance for the deck to be extended out approximately one foot to the bearing wall but is not going to allow the extension of the deck over the roof and is denying the variance for the porch/deck off the first floor. **Frank Benesh, seconded by Joan Aubrey, made a motion to grant the variance with the condition that the deck can go out approximately one foot to the bearing wall but cannot be extended any further over the roof and to deny the variance for the porch/deck. The motion passed unanimously (Benesh, Walker, Aubrey, Mason and Benesh).**

There is no further business; the Chairman noted this was a hard argument; it is tough whenever one is building in a setback. He feels it's important to note the Board is trying to follow the rules and treating all applicants uniformly. He does feel it was appropriate to draw the line between deck sizes here.

Dudley asked about the Dickey's and the Healeys, who are both within the setback and what the difference is. The Chairman noted the Healeys' property, compared to the rest of the neighborhood was pie-shaped when all the other properties in the neighborhood had a large amount of land; that is what made it different. There were a number of people who didn't think that shouldn't have been allowed. The Dickey decision could have gone either way. Dudley noted as carpenters these things come up when they get together; folks were surprised that was granted. The Chairman noted the Dickey's were raising the roof line; there was no change to the footprint; they were redoing the whole roof to bring it up to code.

**Chairman Benesh, seconded by Martha Benesh, made a motion to adjourn at 8:19 p.m. The motion passed unanimously (Benesh, Aubrey, Walker, Mason and Benesh).**

Respectfully submitted by:

*Martha D. Tobin*

Recording Secretary